



Department of Energy

Washington, DC 20585

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MEMORANDUM FOR ALL DEPARTMENTAL ELEMENTS

FROM:

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CHIEF INFORMATION OFFICER


JOSEPH S. MAHALEY
DIRECTOR, OFFICE OF SECURITY AFFAIRS

SUBJECT: Freedom Of Information Act Exemption Determination and
Protection of Sensitive Information for Radio Frequency
Authorizations

The purpose of this memorandum is to advise all Department of Energy (DOE) organizational elements of the public release of 6,319 potentially sensitive DOE Radio Frequency Authorization (RFA) records under a Freedom of Information Act (FOIA) request, and to direct DOE to insure that proper measures (as described below) are taken for the protection of sensitive RFA information from unwarranted release in the future.

On September 14, 1998, the Department of Commerce responded to an FOIA request for the entire Government Master File (GMF) containing detailed information on all Federal radio frequency assignments. As part of this response, the National Telecommunications and Information Administration (NTIA), the national licensing authority for all Federal Radio Spectrum administered by Commerce, released 6,319 DOE GMF records that did not have the "FOIA Exempt" field marked in the record.

The instructions for marking the FOIA Exempt field in an RFA request are described in the NTIA *Manual of Regulations and Procedures for Federal Radio Frequency Management* (refer to Chapter 9, Section 9.8.2, item 41), as authorized by Title 47 United States Code (U.S.C) 901. As explained in the NTIA Manual, this field is to be marked with an "X" when it is determined by the submitter's FOIA Officer that the information contained in the RFA is to be exempt from release in accordance with the provisions of the FOIA, Title 5 U.S.C. 552, as amended. The NTIA Manual also provides the policies and general guidance regarding public access to the Federal spectrum management process, including nonclassified Federal radio frequency information and access to electronic databases (refer to Chapter 11). (Note: The NTIA Manual can be viewed on NTIA's Web site, located at: <http://www.ntia.doc.gov/osmhome/redbook/redbook.html>.)

Contains information which may be exempt from public release under the Freedom of Information Act (5 USC 552), exemption number 2. Approval by the Department of Energy prior to public release is required.
Reviewed by: Joseph S. Mahaley, NN-50 April 2, 1999

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While it is recognized that DOE must accept some responsibility for the release, possibly from lack of due diligence in following through on the FOIA Exempt determination process, the fact remains that the release of DOE RFA information creates a potential vulnerability. Sensitive information about DOE operations and critical infrastructure was included in the released records. These released records include almost two-thirds of DOE's RFAs from the GMF as of February 27, 1998. It should be noted that these are the complete GMF records used by the DOE radio community for frequency coordination, and these records contain all the engineering data (including radio frequency, region and range of operation, transmitter/receiver/antenna specifications, etc.), as well as descriptive comments concerning sensitive DOE radio spectrum operations. Be aware that the requester has since filed an appeal for the remaining 3,273 DOE GMF records that are marked FOIA Exempt.

Examples of the types of national security and other sensitive information that were included in the released DOE GMF records are: Transportation Safeguards Division voice and data systems; vehicle tracking systems for transporting nuclear materials; Nuclear Emergency Search Team deployment microwave systems; DOE Secure Communications operations; all of DOE's site security networks, including Headquarters; communication systems between Sandia security and U.S. Air Force air base network; Nuclear Regulatory Commission safety margin systems for nuclear containment; nuclear explosion simulation systems; satellite systems for proliferation detection of clandestine nuclear explosions; and Radiological Assistance Program systems.

DOE Order 471.2A, INFORMATION SECURITY PROGRAM, dated March 27, 1997, directs all owners of data with the responsibility for determining the sensitivity of information before it is used or stored in information systems. Therefore, consistent with DOE O 471.2A, all organizational elements (including Program Offices, Operations Offices, Power Administrations, field sites, national laboratories, and other DOE management and operating facilities) are directed to diligently review their RFA records to determine if FOIA exemption is needed to insure proper protection of sensitive, unclassified DOE spectrum-dependent systems. It is further directed that determination for FOIA exemption shall be a routine part of the submitter's RFA application process, and that all FOIA Exempt determinations shall be coordinated with the local FOIA Officer.

Sensitivity determination for the information contained in all RFA requests shall be the submitter's responsibility. This determination shall be certified by a DOE official from the submitting organization before the RFA request will be transmitted by the Office of Information Management to NTIA for coordination and approval. Since cases requiring FOIA exemption for an RFA must be approved by a FOIA Officer, any information of record documenting the decision process for FOIA Exempt determination shall be included by the submitter with the RFA application.

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We have a unique opportunity to mitigate the vulnerability resulting from the release of the 6,319 DOE RFA records through our future activities. Public Law 102-538, NTIA Authorization Act of 1992, requires Federal agencies to transition to spectrum-efficient land mobile radio technologies for both very high frequency and ultrahigh frequency radio systems by 2005 and 2008, respectively. As DOE replaces old wideband radio systems with newer, narrowband technology, new frequency assignments will be required. This will allow us a second chance to protect sensitive RFA information in compliance with DOE O 471.2A, provided that the proper FOIA Exempt determination process is followed for all new RFA requests.

If we can be of any further assistance in this matter, provide additional guidance, or answer any questions, please contact Bill Hollingsworth by telephone at (301) 903-2997, by facsimile to (301) 903-4101, via electronic mail to: william.hollingsworth@hq.doe.gov, or through regular mail service.

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